

Remarks

Claims 1-2, 6, and 11-13 have been amended and Claims 4 and 5 have been cancelled. Support for the claim amendments may be found throughout the specification, including, but not limited to the following: Claims 1 and 13 from original claims 4 and 5 and on Page 22, ¶¶ [0074]-[0075] and in combination with figures 16 and 17; and Claim 2 on Page 21, lines 26-29 in combination with Fig. 13. Claims 6 and 11-12 have been amended to correct for the cancellation of Claim 4 and to include proper dependency. No new matter has been entered by the claim amendments and the Applicant respectfully requests the Examiner to enter the claim amendments accordingly.

The Applicant graciously thanks the Examiner for withdrawing the 35 U.S.C. §112 rejection to Claims 1, 13, and 18 in response to the amendments previously filed. The Applicant respectfully request an Interview to discuss the substance of the response submitted herewith.

Summary of the Examiner's Interview on July 1, 2009

The Applicant and the Examiner discussed the Palmaz reference in light of the De Goicoechea reference indicating that the Palmaz reference is for the stent structural members and the De Goicoechea reference is for plastic grafts with specific crimped structure that is unable to impart longitudinal flexibility. The Applicant discussed with the Examiner the amendments to claims 1, 2, 10, 13, 17, and 18. The Examiner indicated that the support for claim 2 should be limited to the language in the specification, as Figure 13 shows that the perforations on slope of the valley and not in the middle of the valley. The Applicant and the Examiner discussed the amendment to claim 17, and the Examiner indicated that the amendment included a greater structural limitation to the longitudinal flexibility of the graft and may distinguish claim 1 over the prior art. The Examiner indicated that she would issue a final office action and that we could further discuss claim amendments after final.

Arguments***Claim Rejections - 35 USC § 112***

- I. Claim 2 rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

The Examiner stated that the specification does not describe microperforations present only in the valleys of the undulating pattern, and the Examiner suggests amending the claim to

include the particulars of figure 13 as described in the specification to overcome this rejection. The Applicant has amended Claim 2 to state “microperforations are present in the valleys of the undulating pattern”. Claim 2 now complies with the written description requirement. As such, the Applicant respectfully requests the Examiner to withdraw the rejection of Claim 2 under 35 U.S.C. 112, first paragraph.

Claim Rejections - 35 USC § 103

- I. Claims 1-4 and 13-15, & 17-20 rejected under 35 U.S.C. §103(a) as being unpatentable over Palmaz et al (WO 01/74274) in view of De Goicoechea et al. (U.S. Patent No. 5,383,927)

The Applicant has amended Claim 1 to state “at least one of a plurality of non-undulated circumferential regions positioned at the end region of the body member, wherein at least one of a plurality of suturing openings passing through the wall thickness of the at least one of the plurality of non-undulated regions of the body member”. Palmaz in view of De Goicoechea does not teach or suggest “at least one of a plurality of non-undulated circumferential regions positioned at the end region of the body member, wherein at least one of a plurality of suturing openings passing through the wall thickness of the at least one of the plurality of non-undulated regions of the body member”. Thus, Claim 1 is nonobvious in light of Palmaz in view of De Goicoechea as not including each and every limitation of Claim 1.

Regarding Claim 2, the Examiner stated that one of ordinary skill in the art would understand that the pattern can be selectively placed to achieve varying sites for cellular migration, and such a modification of Palmaz would have occurred using known methods and yielding predictable results. The Applicant respectfully disagrees. None of the prior art references teach or suggest the microperforations are present in the valleys of the undulating pattern. While Palmaz does discuss selective patterning, one of ordinary skill in the art would not select the valleys of the undulating pattern to place the microperforations for achieving varying sites for cellular migration. There is no predictability that using known methods would yield such results.

Regarding Claim 17, the Examiner stated that Palmaz in view of Van Schie would be fully capable of bending in excess of 180 degrees about the longitudinal axis, since Palmaz discloses thin film deposition, which results in a thin and flexible prosthesis. The Applicant respectfully disagrees, as something which is thin and flexible does not necessarily result in a

medical device being capable of bending in excess of 180 degrees. The Applicant respectfully requests the Examiner to come forth with some evidence other than the general characteristics of the material used in Palmaz. As such, the Applicant respectfully requests the Examiner to withdraw the rejection of Claim 17 and dependent claims 18-20 as being unpatentable over Palmaz in light of De Goicoechea.

II. Claims 5, 12 and 16 rejected under 35 U.S.C. §103(a) as being unpatentable over Palmaz et al. in view of De Goicoechea et al. (U.S. 5,383,927), further in view of Van Schie et al. (U.S. 6,974,471).

Regarding Claim 5, the Applicant has cancelled Claim 5, which renders the Examiner's rejection of claim 5 moot.

Regarding Claim 1, Palmaz in view of De Goicoechea and Van Schie do not teach or suggest "at least one of a plurality of non-undulated circumferential regions positioned at the end region of the body member, wherein at least one of a plurality of suturing openings passing through the wall thickness of the at least one of the plurality of non-undulated regions of the body member". First, Palmaz is an endoluminal implantable web-stent and stent-graft which are implanted inside a vessel utilizing minimally invasive delivery techniques. Palmaz, page 1, lines 10-15. Contrarily, De Goicoechea is a vascular prosthesis or graft for the replacement of segments of human blood vessels. De Goicoechea, Col. 1, lines 14-19. Thirdly, Van Schie is a prosthetic device including a graft tube with several zig-zag stents to open the graft, where a suture material 25 is fastened at points 27, 29, and 30 to fasten the graft tube to the stents to cause a curving to the graft tube as fit in a curved lumen such as a thoracic aorta. Van Schie, Col. 4, lines 10-60, and Figures 4 and 6. Van Schie does not include suture openings in the graft itself, nor does Van Schie teach or suggest including the suture openings at opposing ends of the graft. Thus, Claim 1 is nonobvious in light of Palmaz in view of De Goicoechea and Van Schie as not including each and every limitation of Claim 1.

Since the Examiner has failed to establish a *prima facie* case of obviousness with respect to independent claims 1, all claims depending from independent claim 1 are also nonobvious. Claims 12 and 16, which depend from independent claim 1, are, therefore, nonobvious. The Applicant respectfully requests the Examiner to withdraw the rejection of Claims 12 and 16 accordingly.

- III. Claims 6-10 rejected under 35 U.S.C. §103(a) as being unpatentable over Palmaz et al in view of De Goicoechea et al. and Van Schie et al. as applied above, and in further view of Kula et al (U.S. 6,325,825)

Since the Examiner has failed to establish a *prima facie* case of obviousness with respect to independent claims 1, all claims depending from independent claim 1 are also nonobvious. Claims 6-10, which depend from independent claim 1, are, therefore, nonobvious. The Applicant respectfully requests the Examiner to withdraw the rejection of Claims 6-10 accordingly.

- IV. Claim 11 rejected under 35 U.S.C. §103(a) as being unpatentable over Palmaz et al and De Goicoechea et al., as applied above and further in view of Banas et al. (U.S. 5,749,880)

Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Palmaz et al. in view of De Goicoechea et al., and further in view of Banas et al. (U.S. Patent No. 5,749,880). As discussed above, the Examiner has failed to establish a *prima facie* case of obviousness with respect to independent claim 1. Since independent claim 1 is nonobvious in view of the prior art, claim 11, which depends from independent claim 1, is also nonobvious.

CONCLUSION

Applicants respectfully request that the Examiner withdraw the rejections of claims 1-20 based on the remarks presented herein. Applicants also formally request an interview with the Examiner to discuss such remarks and claim amendments presented herein. The Examiner is also welcome to telephone the undersigned attorney of record if the Examiner believes that there are any outstanding matters capable of resolution by a telephone interview.

No fees are believed due with this Response, however, the Director is hereby authorized to charge any under payment of fees, or credit any overpayment to Deposit Account No. 18-2000, of which the undersigned is an authorized signatory.

Respectfully submitted,


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